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7 Attorney for Defendants Sandra Winfrey  
and Brian Putze

8 **IN THE UNITED STATES DISTRICT COURT**

9 **FOR THE DISTRICT OF ARIZONA**

10 Carl A. Wescott,

11 Plaintiff,

12 vs.

13 David Crowe; Mike Lyonette; Thomas P.  
14 Madden; Taylor Collins; Jeff Rau; Darrell  
Bushnell; Amy Bushnell; Peter Tierney;  
Kathy Fettke; Susie Yee; Norman Davies;  
Claire Davies; Sandra Winfrey; Brian Putze;  
Colin Ross; Brad Malcolm; Michael Jimenez;  
Gustavo Varela; Robert Crowe; Bernadette  
Brown; Federico Gurdian; Terencio Garcia,  
Does 1 through 50,

15 Defendants.

16 Case No.: CV 20-1383 PHX-SPL

17 **DEFENDANTS SANDRA WINFREY  
18 AND BRIAN PUTZE'S REPLY IN  
19 SUPPORT TO MOTION TO  
20 DISMISS**

21 (Honorable  
Steven P. Logan)

22 Defendants Sandra Winfrey and Brian Putze (collectively, the "Winfrey Defendants"),  
23 by and through undersigned counsel, hereby file their Reply in Support to their Joinder to the  
24 Motion to Dismiss [Doc. 12, 14]. In support of their Reply, the Winfrey Defendants state the  
25 following:<sup>1</sup>

26 <sup>1</sup> Plaintiff begins his Response contending that the Motion to Dismiss should be struck for  
Defendants' failure to meet and confer to discuss whether the First Amended Complaint could  
be cured by possible amendment. [See generally Doc. 23, pp. 1-3]. Plaintiff admits that the  
undersigned and Plaintiff held a twenty (20) minute teleconference concerning the facts and  
claims alleged in Plaintiff's First Amendment Complaint (among other items). The undersigned  
made clear that the Winfrey Defendants are not liable to Plaintiff under any set of facts as they  
have never met Plaintiff, never engaged in any business transaction with Plaintiff, and are  
Virginia residents. In all candor to the Court, the undersigned submits that he did not expressly  
inform Plaintiff that he had the option to amend the First Amended Complaint. That is not the

1           **I.     The Winfrey Defendants are not Subject to General Jurisdiction.**

2           The Ninth Circuit makes clear that “[i]n opposing a defendant’s motion to dismiss for  
 3 lack of personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is  
 4 proper.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (citation omitted). And, “[a]  
 5 plaintiff may not simply rest on the ‘bare allegations of [the] complaint.’ ” *Id.* (citations  
 6 omitted). Plaintiff concedes that “[t]here are only two Defendants for whom the Plaintiff is  
 7 highly confident he could get general jurisdiction: Mr. Jeff Rau . . . and Mr. Tomas P. Madden.”  
 8 [Doc. 23, p. 5:6-8]. More importantly, Plaintiff concedes that “[f]or the two Winfrey  
 9 Defendants . . . the Plaintiff does not know enough about their activities to intelligently opine.”  
 10 [*Id.* p. 5:9-12]. That is because there are none. Plaintiff has not, and cannot, pointed to any fact  
 11 or law to support a finding of general jurisdiction in this forum. Namely, Plaintiff fails to point  
 12 to any set of facts that demonstrate the Winfrey Defendants engaged in substantial, systemic,  
 13 and continuous activities in Arizona that they can be sued in Arizona. *Batton v. Tennessee*  
 14 *Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987)(quotations omitted). The  
 15 Winfrey Defendants’ contacts with Arizona are non-existent and do not establish personal  
 16 general jurisdiction.  
 17

18           **II.    There is No Specific Jurisdiction over the Winfrey Defendants.**

19           Plaintiff next argues, in conclusory fashion, that “[he] believes he has enough for specific  
 20 jurisdiction in this District for all named Defendants, including the Winfrey Defendants . . .”  
 21 [*Id.* p. 5:14-17]. For support, Plaintiff copies and pastes various allegations from the First  
 22

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23 undersigned’s responsibility. Plaintiff is presumed to know the civil rules. Further, based on  
 24 any reasonable interpretation of the parties’ conversation, it was clear that any amendment  
 25 would be futile for the reasons state herein. Plaintiff’s subjective understanding of the parties’  
 26 conversation does not warrant striking the Motion to Dismiss or the Winfrey Defendants’  
 Joinder.

1 Amended Complaint and an attached Exhibit “A”.<sup>2</sup> A reading of those facts, however, shows  
 2 that Plaintiff fails to demonstrate how the Winfrey Defendants’ purported conduct or omission  
 3 created sufficient minimum contacts with Arizona to allow this Court specific personal  
 4 jurisdiction. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984). Plaintiff cannot  
 5 point to any contract, non-disclosure agreement, let alone any set of facts to demonstrate the  
 6 Winfrey Defendants directed any activities to Arizona or that they purposefully availed  
 7 themselves to the privileges, benefits, and protections of this forum. *See Dole Food Co., Inc. v.*  
 8 *Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). The Winfrey Defendants are not signatories on any  
 9 contract let alone any contract that binds them to this forum. Plaintiff fails to allege facts, or  
 10 submit any admissible evidence, sufficient to support personal specific jurisdiction over the  
 11 Winfrey Defendants.  
 12

### 13           **III. Plaintiff Fails to State a Claim and Leave to Amend Should be Denied.**

14 Plaintiff’s First Amended Complaint should be dismissed; thus, this Court need not reach  
 15 the merits of the case. Indeed, “a federal court generally may not rule on the merits of a case  
 16 without first determining that it has jurisdiction over the category of claim in suit (subject-  
 17 matter jurisdiction) and the parties (personal jurisdiction).” *Sinochem Int’l Co. v. Malaysia Int’l*  
 18 *Shipping Corp.*, 549 U.S. 422, 430-31 (2007). “[T]he Supreme Court has specifically instructed  
 19 that a district court must first determine whether it has jurisdiction before it can decide whether  
 20

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21  
 22           <sup>2</sup> Plaintiff contends that the Exhibit “A” is the first paragraph of a narrative he used to set the  
 23 context in a Motion to Deem Certain RFA’s Admitted as to Defendant Jeff Rau. The Winfrey  
 24 Defendants note that those facts in Exhibit A have not been alleged in the First Amended  
 25 Complaint nor are they alleged in Plaintiff’s response in the form of an affidavit or declaration  
 26 signed under the penalty of perjury. The Winfrey Defendants further note that the Motion to  
 Deem Certain RFA’s Admitted is a pending and undecided motion that this Court need not  
 consider. *See LR.Civ. 3.6(c)*. In any event, even if those facts are considered, they fail to show  
 how these Defendants are subject to this Court’s jurisdiction.

1 a complaint states a claim.” *Moore v. Maricopa Cty. Sheriff’s Office*, 657 F.3d 890, 895 (9th  
2 Cir. 2011).

3 Here, assuming the Court can exercise personal jurisdiction over the Winfrey  
4 Defendants, Plaintiff does not address how his First Amended Complaint states a cognizable  
5 claim against these Defendants. Indeed, Plaintiff recognizes his deficient pleading and “agrees  
6 with the Defendants that his legal complaint could be improved.” Plaintiff requests to  
7 “improve” his pleading via amendment should be denied as futile as discussed in the moving  
8 papers. There are no set of supplemental facts that Plaintiff can allege that would impose  
9 liability on the Winfrey Defendants—parties who have never contracted with Plaintiff, have  
10 never met Plaintiff, and did not know about Plaintiff until the commencement of this Action.  
11 For the reasons stated herein, the First Amended Complaint should be denied.

12                   **RESPECTFULLY SUBMITTED** this 11<sup>st</sup> day of August, 2020.

13                   **ZAZUETA LAW, PLLC**

14                   /s/ Fabian Zazueta

15                   Fabian Zazueta, Esq.

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19                   Attorney for Sandra Winfrey and Brian Putze

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2020, I electronically submitted the attached document to the Clerk's office using EMF/ECF system for filing and electronically served the same to the following recipient:

Troy A. Wallin, Esq.

Chad A. Hester, Esq.

Wallin Hester PLC

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H. Troy Romero, Esq. (*Pro Hac Vice Pending*)

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#### Attorneys for Defendants

I further hereby certify that on August 11, 2020, I e-mailed the attached document to the following recipient:

Carl A. Wescott

Carlwescott2020@gmail.com

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Carlwsoi@gmail.com

Carriwso v. gma

/s/ Fabian Zazueta